

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THRIVEST SPECIALTY FUNDING, LLC	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 18-4764
v.	:	
TOBY L. WRIGHT,	:	
Defendant.	:	

EXPLANATION AND ORDER

AND NOW, this 21ST day of October, 2019 the Court holds Defendant Toby L. Wright in **CONTEMPT** of the Court’s August 12, 2019 Order (ECF No. 35) (“Escrow Order”). The Escrow Order confirmed the Emergency Arbitrator’s Interim Award directing Wright to escrow \$800,000 pending resolution of arbitration. For the reasons that follow, the Court imposes the civil contempt sanctions listed in paragraph 3 below:

1. A civil contempt order may issue if the district court finds that (1) “a valid order of the court existed,” (2) “the defendant[] had knowledge of the order,” and (3) “the defendant[] disobeyed that order.” *Marshak v. Treadwell*, 595 F.3d 478, 485 (3d Cir. 2009) (citation and internal quotation marks omitted). The party moving for contempt sanctions must prove each element by “clear and convincing evidence, and ambiguities must be resolved in favor of the party charged with contempt.” *John T. ex rel. Paul T. v. Delaware Cnty. Intermediate Unit*, 318 F.3d 545, 552 (3d Cir. 2003) (citations and internal quotation marks omitted). Thrivest has satisfied its burden as to the first and third elements. The Court’s Escrow Order is valid. It is also clear that Wright has not escrowed any funds.

2. The second element—Wright’s knowledge of the Escrow Order—requires more discussion. Thrivest’s initial contempt briefing argued that Wright had knowledge of the Escrow Order because electronic notice was sent to his now-withdrawn attorney, Ronald Ellett. ECF No.

36. But Mr. Ellett subsequently informed the Court—in a September 18, 2019 phone conference on the record, with Thrivest’s counsel participating—that he had been unable to communicate with Wright for more than a month before the August 12, 2019 Escrow Order. Given that development, Thrivest’s initial argument regarding Wright’s knowledge may not have carried its burden. However, Thrivest has since offered additional proof that satisfies its burden. First, Thrivest personally delivered its contempt motion and notice of the contempt hearing to the physical home address that Wright gave to Mr. Ellett. ECF No. 59. Although Mr. Ellett has since suggested that this address belongs to Wright’s father, and not Wright, Thrivest has also submitted proof that Wright listed the same address as his own in a 2016 LLC filing with the State of Arizona. *See* ECF No. 66-5. Finally, Thrivest has also submitted proof that on October 7, 2019, Thrivest delivered an electronic copy of the Court’s Escrow Order to an email address that Wright recently used to communicate with Mr. Ellett. *See* ECF No. 63 (Thrivest’s proof of electronic service to Wright’s email address); ECF No. 66 (Thrivest showing that Wright recently used the same email address). Together, this evidence satisfies Thrivest’s burden of proving Wright’s knowledge of the Escrow Order.

3. Because Thrivest has satisfied its burden of proving the elements of contempt, and because Wright has not raised any defense to contempt—such as inability to comply—the Court holds Wright in contempt of the Court’s Escrow Order¹ and imposes the following sanctions:

¹ The Escrow Order directed Wright to comply with the Emergency Arbitrator’s Interim Award. The Emergency Arbitrator’s Interim Award ordered Wright to escrow \$800,000 into “the trust account of his attorney, Ronald Ellett.” ECF No. 25-3. However, Mr. Ellett has subsequently withdrawn from representing Wright. Accordingly, it is no longer possible to comply with the literal terms of the Emergency Arbitrator’s directive or, by extension, the Escrow Order. Therefore, the sanctions in paragraph 3 direct Wright to place \$800,000 in a trust account maintained by Fox Rothschild LLP, the law firm representing Thrivest in this matter.

- a. Wright will continue to be held in contempt and subject to the sanctions listed in this paragraph 3 unless and until he causes \$800,000 to be deposited into a trust account maintained by Fox Rothschild LLP or submits adequate proof of his inability to do so.² Fox Rothschild must hold the funds in escrow in a non-interest bearing IOLTA account in the Commonwealth of Pennsylvania pending further order from this Court. Under no circumstances may Fox Rothschild remove or transfer the funds, once deposited, without first requesting permission to do so from this Court.
- b. Unless and until Wright complies with the directive in paragraph 3(a) or submits adequate proof of his inability to comply with that directive, any bank, financial institution, or brokerage institution, or other person or entity holding any funds, securities, or other assets in the name of, for the benefit of, or under the direct or indirect control of Wright, must prohibit the withdrawal, removal, transfer, or other disposal of those funds, securities, or assets. This sanction, however, will not apply to any withdrawal, removal, transfer, or other disposal of funds necessary to allow Wright to make medical expenditures.

² A party facing contempt may raise a defense that he or she is presently unable to comply with the order in question. *United States v. Rylander*, 460 U.S. 752, 757 (1983) (citations omitted). Where “compliance is impossible, neither the [party requesting contempt] nor the court has any reason to proceed with the civil contempt action.” *Id.* If Wright is financially unable to place \$800,000 in escrow, he may be able to satisfy this defense. But he must first raise it, and if he does, he must provide “evidence beyond a mere assertion of inability.” *Harris v. City of Philadelphia*, 47 F.3d 1311, 1324 (3d Cir. 1995) (citations and internal quotation marks omitted). Instead, Wright “must show categorically and in detail why he is unable to comply.” *United States v. Baker Funeral Home, Ltd.*, 196 F. Supp. 3d 530, 554 (E.D. Pa. 2016) (citations and internal quotation marks omitted).

- c. Unless and until Wright complies with the directive in paragraph 3(a) or submits adequate proof of his inability to comply with that directive, Wright is prohibited from making any non-medical expenditures in excess of \$500 without Court approval.
- d. Plaintiff Thrivest may serve this Order on any financial institutions, banks, persons, or other entities mentioned in paragraph 3(b).
- e. Thrivest must serve Wright with a copy of this Order by personal service to the physical address Wright has provided to Mr. Ellett. Thrivest must also deliver an electronic copy of this Order to Wright's e-mail address. **On or before October 22, 2019**, Thrivest must submit proof of electronic service via email. **On or before October 29, 2019**, Thrivest must submit proof of personal service to the physical address Wright has provided to Mr. Ellett.
- f. The Court may impose further sanctions if Wright persists in his failure to either comply with the directive in paragraph 3(a) or prove his inability to comply with that directive. **On November 1, 2019, at no later than 2:00pm EST**, Thrivest must submit a status report updating the Court on Wright's compliance.

s/Anita B. Brody

ANITA B. BRODY, J.

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